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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

MARK A. MORGAN, d/b/a
MORGAN INDUSTRIES PAVING
AND LANDSCAPING,

Plaintiff,

vs.

HARRY JOHNSON PLUMBING &
EXCAVATION, INC., a Washington
corporation; COBURN
CONTRACTORS, LLC, an Alabama
limited liability company,
HARTFORD FIRE INSURANCE
COMPANY, a Connecticut company,
and
NATIONWIDE MUTUAL
INSURANCE COMPANY, an Ohio
company,

Defendants.

Case No.

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

1. Jurisdiction of this Court is based upon and conferred by § 3133 of Title 40 of the United States Code.

2. Plaintiff Mark A. Morgan d/b/a Morgan Industries Paving and Landscaping (“Morgan”) is and at all times material hereto was and is an individual residing the State of Idaho and doing business within the State of Washington.

3. Defendant Harry Johnson Plumbing and Excavation, Inc. (“HJPE”) at all times herein mentioned was and is a Washington corporation with its principal place of business in Walla Walla, Washington.

4. Defendant Coburn Contractors, LLC (“Coburn”) is and at all times material hereto was an Alabama limited liability company with its principal place of

1 business in Montgomery, Alabama.

2 5. Defendant Hartford Fire Insurance Company (“Hartford”) is and at all
3 times material hereto was a Connecticut company.
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5 6. Defendant Nationwide Mutual Insurance Company (“Nationwide”) is
6 and at all times material hereto was an Ohio company.
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8 7. The agreements hereinafter referred to were performed within the
9 territorial jurisdiction of this Court.
10

11 **FIRST CAUSE OF ACTION**
12 **(Breach of Contract – Against Coburn)**

13 8. Morgan repeats herein by this reference Paragraphs 1 through 7,
14 inclusive, as if said paragraphs were set forth hereat in full.
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16 9. Morgan is informed and believes and based thereon alleges that on or
17 about June 9, 2016, the United States of America, acting by and through the
18 Department of Veterans Affairs, and Coburn entered into a written contract (“Prime
19 Contract”), whereby Coburn agreed to furnish certain labor and materials and
20 perform certain work required in connection with the replacement of the water
21 system and work related thereto at the Jonathan M. Wainwright VA Medical Center,
22 Walla Walla, Washington (“the Project”).
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25 10. Subsequent to the formation of the Prime Contract, Coburn and HJPE
26 entered into an agreement (“Subcontract”), whereby HJPE agreed to provide certain
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1 labor, materials and services to Coburn in connection with the performance of the
2 Project in return for payment of the contract price.

3 11. Subsequent to the formation of the subcontract, Morgan and HJPE
4 entered into an agreement (“Sub-Subcontract”) whereby Morgan agreed to provide
5 certain labor, materials and services to HJPE in connection with the construction of
6 the project in return for payment of the contract price.
7
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9 12. Between approximately July 2016 and April 2018, inclusive, Morgan
10 did furnish, deliver and provide certain labor, material and services in connection
11 with the performance of the Sub-Subcontract. All of the labor, material and services
12 furnished by Morgan were to be used and were actually used in connection with the
13 Project.
14
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16 13. Morgan has performed all of the work required under the Sub-
17 Subcontract and has performed all conditions, covenants and promises required on
18 its part to be performed in accordance with the terms of the Sub-Subcontract, except
19 as the same have been excused, waived and/or prevented by HJPE, Coburn and/or
20 employees or agents of the same.
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23 14. Throughout the Project, Morgan repeatedly encountered unforeseen
24 underground site conditions causing Morgan to incur additional labor, materials, and
25 expenses beyond the scope of the Sub-Subcontract for which it is entitled to be paid
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1 additional amounts above and beyond the Sub-Subcontract price.

2 15. During the Project HJPE and/or Coburn, or their respective agents or
3 employees, directed Morgan to perform additional work beyond the scope of the
4 Sub-Subcontract for which it is entitled to be paid additional amounts above and
5 beyond the Sub-Subcontract Price.
6

7 16. Morgan performed its work in accordance with all contractual
8 requirements, including but not limited to any requirements to provide notice to
9 HJPE and/or its employees or agents.
10

11 17. HJPE breached the Subcontract by refusing to pay Morgan in full for
12 the labor, materials and services provided by Morgan. Morgan has suffered damages
13 due to HJPE's non-payment in an amount to be proven at trial but not less than
14 \$100,000.
15

16 18. Morgan has been required to retain the services of an attorney to bring
17 this suit and is entitled to an award of reasonable attorneys' fees incurred pursuant
18 to, *inter alia*, the Sub-Subcontract and the revised Code of Washington § 4.84.330,
19 in connection with prosecuting this action.
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24 **SECOND CAUSE OF ACTION**
25 **(Quantum Meruit Against HJPE)**

26 19. Morgan repeats herein by this reference each and every allegation set
27 forth in Paragraphs 1 through 18, inclusive, as if said paragraphs were set forth hereat
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1 in full.

2 20. In connection with the Project, Morgan supplied certain labor,
3 materials, and services to Defendant HJPE upon Defendant HJPE's request and
4 promise to pay the reasonable value thereof.
5

6 21. Morgan is entitled to be paid for the reasonable value of said labor,
7 materials, and services furnished by Morgan at Defendant HJPE's request for which
8 payment has not been received.
9

10 22. Morgan has suffered damages due to HJPE's non-payment in an
11 amount to be proven at trial but not less than \$100,000.
12

13 23. Morgan has been required to retain the services of an attorney to bring
14 this suit and is entitled to an award of reasonable attorneys' fees incurred in bringing
15 this suit, pursuant to, Washington law.
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18 **THIRD CAUSE OF ACTION**
19 **(Unjust Enrichment Against HJPE)**

20 24. Morgan repeats herein by this reference each and every allegation set
21 forth in Paragraphs 1 through 22, inclusive, as if said paragraphs were set forth hereat
22 in full.
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24 25. The labor, materials, and services furnished by Morgan were furnished
25 to Defendant HJPE in furtherance of the Project. Morgan is informed and believes,
26 and on that basis alleges that Defendant HJPE has billed for, has demanded payment
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1 from, and has received payment from the Department of Veteran's Affairs for labor,
2 materials, and services furnished by Morgan at the Project. Defendant HJPE has
3 thereby been unjustly enriched at the expense of Morgan and to Morgan's detriment.
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5 26. Defendant HJPE has been unjustly enriched in an amount to be proven
6 at trial that is currently unknown but estimated to be in excess of one hundred
7 thousand dollars (\$100,000.00) plus interest thereon at the maximum rate allowed
8 by law, and Morgan is entitled to recover such sums from Defendant HJPE.
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10 27. Morgan has been required to retain the services of an attorney to bring
11 this suit and is entitled to an award of reasonable attorneys' fees incurred pursuant
12 to, *inter alia*, Washington law.
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15 **FOURTH CAUSE OF ACTION**
16 **(Miller Act Payment Bond – Nationwide)**

17 28. Morgan repeats herein by this reference Paragraphs 1 through 26,
18 inclusive, as if said paragraphs were set forth hereat in full.
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20 29. Pursuant to an act of Congress known as the Miller Act and codified as
21 §§ 3131, *et seq.*, of Title 40 of the United States Code, Coburn, as principal, and
22 Nationwide, as surety, duly executed and delivered to the United States of America
23 through its agents a Labor and Material/Payment Bond. Said Payment Bond was to
24 assure payment of the claims of all persons supplying labor and materials in the
25 prosecution of the work identified under the aforementioned Prime Contract.
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1 30. Based upon the failure of HJPE to make payment as before-said,
2 Morgan informed Nationwide of its claim and demanded payment thereof.

3 31. Nationwide has failed and refused to pay any part of said sum despite
4 Morgan's demand.

5 32. By reason of the failure of Nationwide to pay Morgan as alleged
6 hereinabove, Nationwide owes Morgan the sum to be proven at trial but not less than
7 \$100,000.00, and Morgan has suffered damages in no less than said sum.
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9 33. One (1) year has not elapsed from the date upon which Morgan last
10 furnished labor, materials or services to the Project.
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13 **FIFTH CAUSE OF ACTION**
14 **(Miller Act Payment Bond – Hartford)**
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16 34. Morgan repeats herein by this reference Paragraphs 1 through 30,
17 inclusive, as if said paragraphs were set forth hereat in full.

18 35. Pursuant to an act of Congress known as the Miller Act and codified as
19 §§ 3131, *et seq.*, of Title 40 of the United States Code, HJPE, as principal, and
20 Hartford, as surety, duly executed and delivered to Coburn through its agents a Labor
21 and Material/Payment Bond. Said Payment Bond was to assure payment of the
22 claims of all persons supplying labor and materials in the prosecution of the work
23 identified under the aforementioned Sub-Contract.
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26 36. Based upon the failure of HJPE to make payment as before-said,
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1 Morgan informed Hartford of its claim and demanded payment thereof.

2 37. Hartford has failed and refused to pay any part of said sum despite
3 Morgan's demand.
4

5 38. By reason of the failure of Hartford to pay Morgan as alleged
6 hereinabove, Hartford owes Morgan the sum of no less than \$100,000.00, and
7 Morgan has suffered damages in no less than said sum.
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9 39. One (1) year has not elapsed from the date upon which Morgan last
10 furnished labor, materials or services to the Project.
11

12 **PRAYER FOR RELIEF**

13 **WHEREFORE,** Morgan prays for judgment against Defendants as follows:
14

15 A. For the principal sum of in an amount to be proven at trial but not less
16 than \$100,000 together with interest thereon as allowed by law;
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18 B. For reasonable attorneys' fees;

19 C. For costs of suit herein; and

20 D. For such other and further relief as the Court deems just and proper.
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1
2 **DATED** this 25th day of September 2018.

3
4 MINNICK•HAYNER, P.S.

5
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Morgan hereby demand a trial by a jury of not less than twelve (12) persons on all issues raised in this action.

DATED this 25th day of September 2018.

MINNICK•HAYNER, P.S.

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